

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAZVAN HOTARANU and LUIS FELIX, on behalf
of themselves and all others similarly situated,

Case No. 16-CV-05320 (KAM)(RML)

ANSWER

Plaintiffs,

-against-

STAR NISSAN INC., JOHN KOUFAKIS SR., JOHN
KOUFAKIS JR., STEVEN KOUFAKIS and
MICHAEL KOUFAKIS,

Defendants.

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Defendants, Star Nissan, Inc., John Koufakis, Sr., John Koufakis, Jr., Steven Koufakis, and Michael Koufakis, by and through their attorneys, Milman Labuda Law Group, PLLC, answer the Complaint of Plaintiffs, Razvan Hotaranu and Luis Felix, as follows:

NATURE OF THE ACTION

1. Defendants admit that Plaintiffs makes allegations contained in paragraph 1 of the Complaint concerning the basis of their claims, but deny that they are entitled to any recovery.

2. Defendants deny information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.

3. Defendants deny the allegations contained in paragraph 3 of the Complaint.

4. Defendants admit the allegations contained in paragraph 3 of the Complaint.

5. Defendants deny the truth of the allegations contained in paragraph 5 of the Complaint.

6. Defendants deny the truth of the allegations contained in paragraph 6 of the Complaint.

7. Defendants deny the truth of the allegations contained in paragraph 7 of the Complaint.

8. Defendants deny the truth of the allegations contained in paragraph 8 of the Complaint.

9. Defendants deny the truth of the allegations contained in paragraph 9 of the Complaint.

10. Defendants deny the truth of the allegations contained in paragraph 10 of the Complaint.

11. Defendants deny the truth of the allegations contained in paragraph 11 of the Complaint.

12. Defendants deny the truth of the allegations contained in paragraph 12 of the Complaint.

13. Defendants deny the truth of the allegations contained in paragraph 13 of the Complaint.

14. Defendants deny the truth of the allegations contained in paragraph 14 of the Complaint.

15. Defendants admit that Plaintiffs makes allegations contained in paragraph 15 of the Complaint regarding on whose behalf they bring this action but deny that a collective action should be certified.

16. Defendants admit that Plaintiffs makes allegations contained in paragraph 16 of the Complaint regarding on whose behalf they bring this action but deny that a class action should be certified.

THE PARTIES

17. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint, except admit that Hotaranu is an adult individual.

18. Defendants deny the truth of the allegations contained in paragraph 18 of the Complaint.

19. Defendants admit the truth of the allegations contained in paragraph 19 of the Complaint.

20. Paragraph 20 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 20 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

21. Paragraph 21 of the Complaint does not require a response.

22. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint, except admit that Felix is an adult individual.

23. Defendants deny the truth of the allegations contained in paragraph 23 of the Complaint.

24. Defendants admit the truth of the allegations contained in paragraph 24 of the Complaint.

25. Paragraph 25 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 25 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

26. Paragraph 26 of the Complaint does not require a response.

27. Defendants deny the truth of the allegations contained in paragraph 27 of the Complaint.

28. Defendants deny the truth of the allegations contained in paragraph 28 of the Complaint.

29. Defendants deny the truth of the allegations contained in paragraph 29 of the Complaint.

30. Defendants deny the truth of the allegations contained in paragraph 30 of the Complaint.

31. Defendants deny the truth of the allegations contained in paragraph 31 of the Complaint.

32. Defendants deny the truth of the allegations contained in paragraph 32 of the Complaint.

33. Defendants deny the truth of the allegations contained in paragraph 33 of the Complaint.

34. Defendants admit the truth of the allegations contained in paragraph 34 of the Complaint.

35. Defendants admit the truth of the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny the truth of the allegations contained in paragraph 36 of the Complaint.

37. Defendants deny the truth of the allegations contained in paragraph 37 of the Complaint.

38. Paragraph 38 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 38 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

39. Defendants admit the truth of the allegations contained in paragraph 39 of the Complaint.

40. Defendants deny the truth of the allegations contained in paragraph 40 of the Complaint.

41. Defendants deny the truth of the allegations contained in paragraph 41 of the Complaint.

42. Paragraph 42 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 42 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

43. Defendants deny the truth of the allegations contained in paragraph 43 of the Complaint.

44. Defendants admit the truth of the allegations contained in paragraph 44 of the Complaint.

45. Defendants deny the truth of the allegations contained in paragraph 45 of the Complaint.

46. Defendants deny the truth of the allegations contained in paragraph 46 of the Complaint.

47. Defendants deny the truth of the allegations contained in paragraph 47 of the Complaint.

48. Defendants deny the truth of the allegations contained in paragraph 48 of the Complaint.

49. Defendants deny the truth of the allegations contained in paragraph 49 of the Complaint.

50. Defendants deny the truth of the allegations contained in paragraph 50 of the Complaint.

51. Defendants deny the truth of the allegations contained in paragraph 51 of the Complaint.

52. Defendants deny the truth of the allegations contained in paragraph 52 of the Complaint.

53. Defendants deny the truth of the allegations contained in paragraph 53 of the Complaint.

54. Defendants deny the truth of the allegations contained in paragraph 54 of the Complaint.

55. Defendants deny the truth of the allegations contained in paragraph 55 of the Complaint.

56. Paragraph 56 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 56 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

57. Defendants admit the truth of the allegations contained in paragraph 57 of the Complaint.

58. Defendants deny the truth of the allegations contained in paragraph 58 of the Complaint.

59. Defendants admit the truth of the allegations contained in paragraph 59 of the Complaint.

60. Defendants deny the truth of the allegations contained in paragraph 60 of the Complaint.

61. Defendants deny the truth of the allegations contained in paragraph 61 of the Complaint.

62. Defendants deny the truth of the allegations contained in paragraph 62 of the Complaint.

63. Defendants admit the truth of the allegations contained in paragraph 63 of the Complaint, but deny that such practices occurred.

64. Defendants deny the truth of the allegations contained in paragraph 64 of the Complaint.

65. Defendants deny the truth of the allegations contained in paragraph 65 of the Complaint.

66. Defendants deny the truth of the allegations contained in paragraph 58 of the Complaint.

67. Paragraph 67 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 67 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

68. Defendants admit the truth of the allegations contained in paragraph 68 of the Complaint.

69. Defendants deny the truth of the allegations contained in paragraph 69 of the Complaint.

70. Defendants deny the truth of the allegations contained in paragraph 70 of the Complaint.

71. Defendants deny the truth of the allegations contained in paragraph 71 of the Complaint.

72. Defendants deny the truth of the allegations contained in paragraph 72 of the Complaint.

73. Defendants deny the truth of the allegations contained in paragraph 73 of the Complaint.

74. Defendants deny the truth of the allegations contained in paragraph 74 of the Complaint.

75. Defendants deny the truth of the allegations contained in paragraph 75 of the Complaint.

76. Defendants deny the truth of the allegations contained in paragraph 76 of the Complaint.

77. Defendants deny the truth of the allegations contained in paragraph 77 of the Complaint.

78. Paragraph 78 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 78 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

79. Defendants admit the truth of the allegations contained in paragraph 79 of the Complaint.

80. Defendants deny the truth of the allegations contained in paragraph 80 of the Complaint.

81. Defendants admit the truth of the allegations contained in paragraph 81 of the Complaint.

82. Defendants deny the truth of the allegations contained in paragraph 82 of the Complaint.

83. Defendants deny the truth of the allegations contained in paragraph 83 of the Complaint.

84. Defendants deny the truth of the allegations contained in paragraph 84 of the Complaint.

85. Defendants deny the truth of the allegations contained in paragraph 85 of the Complaint.

86. Defendants deny the truth of the allegations contained in paragraph 86 of the Complaint.

87. Defendants deny the truth of the allegations contained in paragraph 87 of the Complaint.

88. Defendants deny the truth of the allegations contained in paragraph 88 of the Complaint.

89. Paragraph 89 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 89 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

JURISDICTION AND VENUE

90. Paragraph 90 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 90 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

91. Paragraph 91 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 91 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

92. Paragraph 92 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 92 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

93. Paragraph 93 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 93 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

COLLECTIVE ACTION ALLEGATIONS

94. Defendants admit that Plaintiffs make allegations contained in paragraph 94 of the Complaint concerning on whose behalf they bring their FLSA claims but deny that collective action certification is warranted.

95. Defendants deny the truth of the allegations contained in paragraph 95 of the Complaint.

96. Defendants deny the truth of the allegations contained in paragraph 96 of the Complaint.

97. Defendants admit the truth of the allegations contained in paragraph 97 of the Complaint.

98. Defendants deny the truth of the allegations contained in paragraph 98 of the Complaint.

99. Defendants deny the truth of the allegations contained in paragraph 99 of the Complaint.

100. Defendants deny the truth of the allegations contained in paragraph 100 of the Complaint.

101. Defendants deny the truth of the allegations contained in paragraph 101 of the Complaint.

102. Defendants admit that Plaintiffs allege in paragraph 102 of the Complaint that notice can be provided to the FLSA Collective Members via first class mail to the last known address but deny that notice should be sent.

CLASS ACTION ALLEGATIONS

103. Defendants admit that Plaintiff makes allegations contained in paragraph 103 of the Complaint concerning on whose behalf they are bringing their NYLL claims but deny that class action certification is warranted.

104. Defendants admit that Plaintiffs allege in paragraph 104 of the Complaint that certain individuals should be excluded from the class, but deny that a class action should be certified with respect to any employees.

105. Defendants deny the truth of the allegations contained in paragraph 105 of the Complaint.

106. Defendants deny the truth of the allegations contained in paragraph 106 of the Complaint.

107. Defendants deny the truth of the allegations contained in paragraph 107 of the Complaint.

108. Defendants deny the truth of the allegations contained in paragraph 108 of the Complaint.

109. Defendants deny the truth of the allegations contained in paragraph 109 of the Complaint.

110. Defendants deny the truth of the allegations contained in paragraph 110 of the Complaint.

111. Defendants deny the truth of the allegations contained in paragraph 111 of the Complaint.

112. Defendants deny the truth of the allegations contained in paragraph 112 of the Complaint.

113. Defendants deny the truth of the allegations contained in paragraph 113 of the Complaint.

114. Defendants deny the truth of the allegations contained in paragraph 114 of the Complaint.

115. Defendants deny the truth of the allegations contained in paragraph 115 of the Complaint.

116. Defendants deny the truth of the allegations contained in paragraph 116 of the Complaint.

117. Defendants deny the truth of the allegations contained in paragraph 117 of the Complaint.

118. Defendants deny the truth of the allegations contained in paragraph 118 of the Complaint.

PLAINTIFFS' FACTUAL ALLEGATIONS

119. Defendants deny the truth of the allegations contained in paragraph 119 of the Complaint.

120. Defendants deny the truth of the allegations contained in paragraph 120 of the Complaint.

121. Defendants deny the truth of the allegations contained in paragraph 121 of the Complaint.

122. Defendants deny the truth of the allegations contained in paragraph 122 of the Complaint.

123. Defendants deny the truth of the allegations contained in paragraph 123 of the Complaint.

124. Defendants deny the truth of the allegations contained in paragraph 124 of the Complaint.

125. Defendants deny the truth of the allegations contained in paragraph 125 of the Complaint.

126. Defendants deny the truth of the allegations contained in paragraph 126 of the Complaint.

127. Defendants deny the truth of the allegations contained in paragraph 127 of the Complaint.

128. Defendants deny the truth of the allegations contained in paragraph 128 of the Complaint.

129. Defendants deny the truth of the allegations contained in paragraph 129 of the Complaint.

130. Defendants deny the truth of the allegations contained in paragraph 130 of the Complaint.

131. Defendants deny the truth of the allegations contained in paragraph 131 of the Complaint.

132. Defendants deny the truth of the allegations contained in paragraph 132 of the Complaint.

133. Defendants deny the truth of the allegations contained in paragraph 133 of the Complaint.

FIRST CAUSE OF ACTION

**Fair Labor Standards Act – Failure to Pay Minimum Wage
(Brought on behalf of Plaintiffs and the FLSA Collective)**

134. To the extent that a response is required concerning the allegations contained in paragraph 134 of the Complaint, Defendants deny the allegations.

135. Defendants deny the truth of the allegations contained in paragraph 135 of the Complaint.

136. Paragraph 136 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 136 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

137. Defendants deny the truth of the allegations contained in paragraph 137 of the Complaint.

138. Defendants deny the truth of the allegations contained in paragraph 138 of the Complaint.

139. Defendants deny the truth of the allegations contained in paragraph 139 of the Complaint.

140. Defendants deny the truth of the allegations contained in paragraph 140 of the Complaint.

141. Defendants deny the truth of the allegations contained in paragraph 141 of the Complaint.

SECOND CAUSE OF ACTION

New York Labor Law – Minimum Wage (Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

142. To the extent that a response is required concerning the allegations contained in paragraph 142 of the Complaint, Defendants deny the allegations.

143. Defendants deny the truth of the allegations contained in paragraph 143 of the Complaint.

144. Paragraph 144 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 144 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

145. Paragraph 145 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 145 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

146. Defendants deny the truth of the allegations contained in paragraph 146 of the Complaint.

147. Paragraph 147 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 147 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

148. Defendants deny the truth of the allegations contained in paragraph 148 of the Complaint.

149. Defendants deny the truth of the allegations contained in paragraph 149 of the Complaint.

THIRD CAUSE OF ACTION

**New York Labor Law – Unpaid Overtime
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

150. To the extent that a response is required concerning the allegations contained in paragraph 150 of the Complaint, Defendants deny the allegations.

151. Defendants deny the truth of the allegations contained in paragraph 151 of the Complaint.

152. Defendants deny the truth of the allegations contained in paragraph 152 of the Complaint.

153. Defendants deny the truth of the allegations contained in paragraph 153 of the Complaint.

154. Defendants deny the truth of the allegations contained in paragraph 56 of the Complaint.

FOURTH CAUSE OF ACTION

**New York Labor Law – Unpaid Commissions
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

155. Paragraph 155 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 155 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

156. Paragraph 156 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 156 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

157. Paragraph 157 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 157 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

158. Paragraph 158 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 158 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

159. Paragraph 159 of the Complaint purports to set forth legal conclusions to which no response is required. To the extent that Paragraph 159 sets forth any allegations of fact to which a response is required, Defendants deny those allegations.

160. Defendants deny the truth of the allegations contained in paragraph 160 of the Complaint.

161. Defendants deny the truth of the allegations contained in paragraph 161 of the Complaint.

162. Defendants deny the truth of the allegations contained in paragraph 162 of the Complaint.

163. Defendants deny the truth of the allegations contained in paragraph 163 of the Complaint.

164. Defendants deny the truth of the allegations contained in paragraph 164 of the Complaint.

FIFTH CAUSE OF ACTION

**New York Labor Law – Unlawful Deductions From Wages
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

165. To the extent that a response is required concerning the allegations contained in paragraph 165 of the Complaint, Defendants deny the allegations.

166. Defendants deny the truth of the allegations contained in paragraph 166 of the Complaint.

167. Defendants deny the truth of the allegations contained in paragraph 167 of the Complaint.

168. Defendants deny the truth of the allegations contained in paragraph 168 of the Complaint.

169. Defendants deny the truth of the allegations contained in paragraph 169 of the Complaint.

170. Defendants deny the truth of the allegations contained in paragraph 170 of the Complaint.

SIXTH CAUSE OF ACTION

**New York Labor Law – Breach of Contract
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

171. To the extent that a response is required concerning the allegations contained in paragraph 171 of the Complaint, Defendants deny the allegations.

172. Defendants deny the truth of the allegations contained in paragraph 172 of the Complaint.

173. Defendants deny the truth of the allegations contained in paragraph 173 of the Complaint.

174. Defendants deny the truth of the allegations contained in paragraph 174 of the Complaint.

175. Defendants deny the truth of the allegations contained in paragraph 175 of the Complaint.

176. Defendants deny the truth of the allegations contained in paragraph 176 of the Complaint.

177. Defendants deny the truth of the allegations contained in paragraph 177 of the Complaint.

178. Defendants deny the truth of the allegations contained in paragraph 178 of the Complaint.

179. Defendants deny the truth of the allegations contained in paragraph 179 of the Complaint.

180. Defendants deny the truth of the allegations contained in paragraph 180 of the Complaint.

SEVENTH CAUSE OF ACTION

New York Labor Law – Failure to Provide Proper Wage Notices (Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

181. To the extent that a response is required concerning the allegations contained in paragraph 181 of the Complaint, Defendants deny the allegations.

182. Defendants deny the truth of the allegations contained in paragraph 182 of the Complaint.

183. Defendants deny the truth of the allegations contained in paragraph 183 of the Complaint.

EIGHTH CAUSE OF ACTION

New York Labor Law – Failure to Provide Proper Wage Statements (Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

184. Defendants deny the truth of the allegations contained in paragraph 184 of the Complaint.

185. Defendants deny the truth of the allegations contained in paragraph 185 of the Complaint.

186. Defendants deny the truth of the allegations contained in paragraph 186 of the Complaint.

PRAAYER FOR RELIEF

187. Defendants deny that Plaintiffs are entitled to any relief they seek in the Prayer for Relief.

DEFENDANTS' AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

188. Plaintiffs' claims, in whole or in part, fail to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

189. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

190. Plaintiffs have been paid all monies owed to them.

FOURTH AFFIRMATIVE DEFENSE

191. Although Defendants deny that they owe any alleged unpaid wages or other amounts to Plaintiffs, if it is determined that such monies are owed, Plaintiffs

cannot establish that any alleged violation of the FLSA was willful and, thus, cannot establish entitlement to a three-year statute of limitations with respect to their FLSA claims.

FIFTH AFFIRMATIVE DEFENSE

192. Although Defendants deny that they owe any alleged unpaid wages or other amounts to Plaintiffs, if it is determined that such monies are owed, then Defendants assert that at all times relevant to this action a reasonable good faith dispute existed as to whether such wages or other amounts were owed.

SIXTH AFFIRMATIVE DEFENSE

193. Although Defendants deny that they owe any alleged unpaid wages or other amounts to Plaintiffs, if it is determined that such monies are owed, Plaintiffs are not entitled to liquidated damages because Defendants' actions with respect to the method of paying Plaintiffs were taken in good faith.

SEVENTH AFFIRMATIVE DEFENSE

194. This action is barred, in whole or in part, as to all the hours allegedly worked by Plaintiffs that were not reported in accordance with any applicable policies or procedures.

EIGHTH AFFIRMATIVE DEFENSE

195. This action is barred, in whole or in part as to all hours allegedly worked by Plaintiffs of which Defendants lacked actual or constructive knowledge.

NINTH AFFIRMATIVE DEFENSE

196. Plaintiffs were not employed by all Defendants.

TENTH AFFIRMATIVE DEFENSE

197. NY Labor Law 195 does not provide for a private right of action, and even assuming *arguendo* that it does, Plaintiffs are not entitled to any relief thereunder since they were paid all wages owed to them.

ELEVENTH AFFIRMATIVE DEFENSE

198. Plaintiffs' claims are barred, in whole or in part in equity under the doctrines of unclean hands, laches, waiver, and estoppel.

TWELFTH AFFIRMATIVE DEFENSE

199. Plaintiffs' claims for damages are barred, in whole or in part, by Plaintiffs' failure to mitigate damages.

THIRTEENTH AFFIRMATIVE DEFENSE

200. Plaintiffs are not entitled to an award of attorneys' fees.

FOURTEENTH AFFIRMATIVE DEFENSE

201. If Plaintiffs succeed in establishing any violation under the FLSA or the New York State Labor Law, and to the extent any sums are found due and owing to Plaintiffs, which is expressly denied, Defendants are entitled to a set-off against said sum to the extent paid, tendered, waived, compromised, and/or released prior to the adjudication herein, including but not limited to those amounts paid, tendered, waived, compromised, and/or released through any other proceeding, either formal or informal, or to the extent any additional compensation was paid to Plaintiffs over and above their wages.

FIFTEENTH AFFIRMATIVE DEFENSE

202. Defendants satisfied any and all obligations to Plaintiffs that arose out of and during their employment and, therefore, this action is barred, in whole or in part, by the doctrine of accord and satisfaction.

SIXTEENTH AFFIRMATIVE DEFENSE

203. Plaintiffs' claims are unable to be brought as a class action.

SEVENTEENTH AFFIRMATIVE DEFENSE

204. The potential class is not numerous.

EIGHTEENTH AFFIRMATIVE DEFENSE

205. The questions of law or fact are not common to the potential class.

NINETEENTH AFFIRMATIVE DEFENSE

206. The claims or defenses of the parties are not typical of the claims or defenses of the potential class.

TWENTIETH AFFIRMATIVE DEFENSE

207. The interests of the potential class will not be fairly and adequately protected.

TWENTY-FIRST AFFIRMATIVE DEFENSE

208. The Plaintiffs are not an adequate representative of the putative class members.

TWENTY-SECOND AFFIRMATIVE DEFENSE

209. Plaintiffs are not similarly situated with those they allege are potential members of a collective action.

TWENTY-THIRD AFFIRMATIVE DEFENSE

210. Plaintiffs' claims are barred to the extent they petitioned for bankruptcy either under Chapter 7 or Chapter 13 of the United States bankruptcy code, yet failed to disclose potential claims against Defendants as required under applicable bankruptcy laws.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

211. The Complaint is presented in conclusory and vague terms, which prevents Defendants from anticipating all affirmative defenses and claims that may be applicable in this action. Therefore, to the extent permitted under the Federal Rules of Civil Procedure and applicable case law, Defendants reserve the right to assert additional defenses or claims that may become known during the course of discovery.

DEMAND FOR A JURY TRIAL

212. Pursuant to Fed. R, Civ. Proc. 38(b), Defendants demand a trial by jury in this action.

WHEREFORE, Defendants pray that the Court dismiss the Complaint in its entirety, including each and every demand and prayer for relief contained in the Complaint, and grant such other and further relief that the Court deems just and proper.

Dated: November 30, 2016
Lake Success, NY

/s/ Jamie S. Felsen, Esq.

Jamie S. Felsen, Esq.

Matthew A. Brown, Esq.

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